

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TONY MANNS,

Petitioner,

v.

TRATE,

Respondent.

No. 1:23-cv-01382-SKO (HC)

**SUPPLEMENTAL FINDINGS AND
RECOMMENDATION TO SUMMARILY
DISMISS PETITION**

**[FOURTEEN DAY OBJECTION
DEADLINE]**

Petitioner is a federal prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

I. Background

Petitioner filed his initial habeas petition in this Court on September 22, 2023. (Doc. 1.) Petitioner presented claims concerning a disciplinary proceeding in which he was found guilty of possessing alcohol. On September 27, 2023, the Court conducted a preliminary review of the petition and issued Findings and Recommendations to dismiss the petition for failure to state a claim for relief. (Doc. 5.) On October 24, 2023, Petitioner filed a motion requesting leave to file an amended petition to present cognizable claims concerning the disciplinary proceeding. (Doc. 7.) On October 25, 2023, the Court stayed the Findings and Recommendations and granted Petitioner leave to file a First Amended Petition. (Doc. 8.) Petitioner was granted thirty (30) days to file the First Amended Petition. Over thirty (30) days passed, and no amended petition was

1 filed. Thus, on December 1, 2023, the Court reinstated the Findings and Recommendations.
2 (Doc. 11.)

3 On December 4, 2023, the Court received and filed a First Amended Petition. (Doc. 12.)
4 The amended petition bears a date of November 25, 2023. Under the mailbox rule in Houston v.
5 Lack, 487 U.S. 266, 276 (1988), a petition is deemed filed on the date it is signed and presumably
6 handed to prison authorities for filing. Giving Petitioner the benefit of the mailbox rule, the
7 amended petition is timely filed. Nevertheless, as discussed below, the amended petition also
8 fails to state a cognizable claim and the Court will recommend it be dismissed.

9 II. First Amended Petition

10 As stated in the initial Findings and Recommendations, a search of Petitioner's cell was
11 conducted where a bag full of an unknown liquid substance was discovered that had a strong odor
12 of alcohol. The substance was tested with a resulting alcohol reading of 0.052% BAC. A hearing
13 was held and Petitioner was found guilty of violating Code 113 for possessing alcohol. (Doc. 1 at
14 11.)

15 As more fully discussed in the initial Findings and Recommendations, Petitioner does not
16 dispute that there was at least "some evidence" to support the decision. Superintendent, Mass.
17 Corr. Inst. v. Hill, 472 U.S. 445, 454-455 (1984) ("the requirements of due process are satisfied if
18 some evidence supports the decision by the prison disciplinary board to revoke good time
19 credits.") The substance tested positive for alcohol which Petitioner does not dispute. In his First
20 Amended Petition, Petitioner presents the same claim he did in his initial petition--that the
21 institution failed to test the substance twice again within 15 minutes as required by BOP
22 regulations. As explained in the Findings and Recommendations, if a prison otherwise complies
23 with due process requirements, the failure to comply with its own more generous procedures is
24 not a constitutional violation. Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir. 1994). Petitioner
25 does not dispute that the initial test returned a positive result for alcohol, and he has put forth no
26 evidence to question the reliability of the test. The initial positive test satisfies the "some
27 evidence" standard. As the Supreme Court stressed in Hill, the "some evidence" standard does
28 not impose a rigorous level of due process review:

1 This standard is met if there was some evidence from which the conclusion of the
2 administrative tribunal could be deduced. Ascertaining whether this standard is
3 satisfied does not require examination of the entire record, independent assessment
4 of the credibility of witnesses, or weighing of the evidence. Instead, *the relevant*
5 *question is whether there is any evidence in the record that could support the*
6 *conclusion* reached by the disciplinary board.

7 Hill, 472 U.S. at 455-56 (emphasis added).

8 In his amended petition, Petitioner cites to Glover v. McClintock, 2014 WL 171920 (D.
9 Az. 2014) claiming that two additional tests must be administered within 15 minutes. McClintock
10 provides no support for Petitioner because McClintock concerned the procedures for conducting a
11 breathalyzer test on an inmate. Id. at 3-4. Here, Petitioner was not subjected to a breathalyzer
12 test. Instead, a bag full of a liquid substance was located in Petitioner's cell that tested positive
13 for alcohol. Thus, he fails to demonstrate that there was not at least "some evidence" of a
14 substance containing alcohol discovered in his cell.

15 For the foregoing reasons, the Court finds that Petitioner fails to state a claim that his due
16 process rights were violated. Wolff v. McDonnell, 418 U.S. 539, 555 (1974); Hill, 472 U.S. at
17 455.

18 ORDER

19 Accordingly, the Court hereby SUPPLEMENTS the Findings and Recommendations of
20 September 27, 2023, and RECOMMENDS the First Amended Petition be DISMISSED WITH
21 PREJUDICE for failure to state a claim.

22 The Findings and Recommendations are submitted to the United States District Court
23 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and
24 Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of
25 California.

26 Within fourteen (14) days after being served with a copy, Petitioner may file written
27 objections with the Court. Such a document should be captioned "Objections to Magistrate
28 Judge's Findings and Recommendation." The Court will then review the Magistrate Judge's
ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Failure to file objections within the specified time

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1 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
2 Cir. 1991).

3
4 IT IS SO ORDERED.

5 Dated: **December 6, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE